

AMENDED IN SENATE APRIL 28, 2005

SENATE BILL

No. 399

Introduced by Senator ~~Dunn~~ Escutia

February 17, 2005

~~An act to amend Section 23004.3 of the Government Code, relating to counties.~~ *An act to amend Section 23004.1 of the Government Code, and to repeal and add Section 14124.791 of the Welfare and Institutions Code, relating to health services.*

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, ~~Dunn~~ Escutia. ~~Counties:~~ *reimbursement.* *Health services: 3rd-party liability.*

(1) Existing law prescribes procedures under which a provider, beneficiary, or the Director of Health Services may bring an action or claim against a 3rd party who is liable for services rendered to a beneficiary under the Medi-Cal program. Existing law provides that, subject to a prior right of recovery of the director, a provider who has rendered services to a beneficiary because of an injury for which a 3rd party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for the services provided thereto against any judgment, award, or settlement obtained by the beneficiary or the director against that 3rd party if the provider has made a full reimbursement of any fees paid to the department for those services.

This bill would revise these 3rd-party claim procedures. The bill would revise the provider lien procedures to instead authorize the lien for the reasonable and necessary charges for services provided to the beneficiary against the portion of any judgment, award, or settlement relating to past medical expenses in the action or claim brought against a 3rd party.

(2) Existing law provides procedures under which, in any case in which a 3rd person is liable to pay for health services provided by a county to an injured or diseased person, the county may recover from that 3rd person or be subrogated to any right or claim that the injured or diseased person, including identified parties in interest, have against that 3rd person. Under these procedures, the county's right of action abates during the pendency of an action brought for damages against the 3rd person by the injured or diseased person and continues as a first lien against any judgment recovered by the injured or diseased person.

This bill would provide that the county's right of action would continue under this provision as a first lien subordinate to a lien right of the Director of Health Services and, in addition, against any settlement, compromise, arbitration award, mediation settlement, or other recovery obtained by the injured or diseased person. The bill would also provide that a county enforcing a lien under these provisions, a physician or surgeon, or a public hospital as specified, is a provider for purposes of paragraph (1).

~~Existing law grants a county that has furnished hospital, medical, surgical, or dental care and treatment to a person who is injured or suffers a disease under circumstances creating a tort liability upon a 3rd person a right to recover from the 3rd person the reasonable value of the care and treatment furnished or to be subrogated to any right or claim of the injured or diseased person and to institute and prosecute legal proceedings to enforce those rights.~~

~~This bill instead would specify that, in order to enforce its subrogation rights, the county may institute those proceedings.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23004.1 of the Government Code is
- 2 amended to read:
- 3 23004.1. (a) Subject to the provisions of Section 23004.3, in
- 4 any case in which the county is authorized or required by law to
- 5 furnish hospital, medical, surgical, or dental care and treatment,
- 6 including prostheses and medical appliances, to a person who is
- 7 injured or suffers a disease, under circumstances creating a tort
- 8 liability upon some third person to pay damages therefor, the

1 county shall have a right to recover from ~~said~~ *that* third person
2 the reasonable value of the care and treatment so furnished or to
3 be furnished, or shall, as to this right, be subrogated to any right
4 or claim that the injured or diseased person, his guardian,
5 personal representative, estate, or survivors has against such third
6 person to the extent of the reasonable value of the care and
7 treatment so furnished or to be furnished.

8 (b) The county may, to enforce ~~such~~ *rights established under*
9 *subdivision (a)*, institute and prosecute legal proceedings against
10 the third person who is liable for the injury or disease in the
11 appropriate court, either in its own name or in the name of the
12 injured person, his guardian, personal representative, estate, or
13 survivors. ~~Such~~ *This* action shall be commenced within the
14 period prescribed in Section 340 of the Code of Civil Procedure.
15 In the event that the injured person, his *or her* guardian, personal
16 representative, estate, survivors, or ~~either~~ *any* of them brings an
17 action for damages against the third person who is liable for the
18 injury or disease, the county's right of action shall abate during
19 the pendency of ~~such~~ *that* action, and continue as a first lien,
20 *subordinate to the Director of Health Services' lien rights*
21 *pursuant to Section 14124.74 of the Welfare and Institutions*
22 *Code*, against any judgment ~~recovered~~, *settlement, compromise,*
23 *arbitration award, mediation settlement, or other recovery*
24 *obtained* by the injured or diseased person, his *or her* guardian,
25 personal representative, estate, or survivors, against the third
26 person who is liable for the injury or disease, to the extent of the
27 reasonable value of the care and treatment so furnished or to be
28 furnished. When the third person who is liable is insured, the
29 county shall notify the third person's insurer, when known to the
30 county, in writing of the lien within 30 days following the filing
31 of the action by the injured or diseased person, his *or her*
32 guardian, personal representative, estate, or survivors, against the
33 third person who is liable for the injury or disease; ~~provided,~~
34 ~~however, that~~ *However, the* failure to so notify the insurer shall
35 not prejudice the claim or cause of action of the injured or
36 diseased person, his *or her* guardian, personal representative,
37 estate, or survivors, or the county.

38 *SEC. 2. Section 14124.791 of the Welfare and Institutions*
39 *Code is repealed.*

~~14124.791. (a) Subject to the director's prior right of recovery, a provider who has rendered services to a beneficiary because of an injury for which a third party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for all fees for services provided to the beneficiary against any judgment, award, or settlement obtained by the beneficiary or the director against that third party. A provider may only recover upon the lien if the provider has made a full reimbursement of any fees paid by the department for those services.~~

~~(b) If either the beneficiary or the director brings an action or claim against the third party, the party bringing the action shall, within 30 days of bringing the action, give written notice to any provider who is eligible to file a lien under subdivision (a) of the action and of the name of the court or state or local agency in which the action or claim is brought. Notice shall be given by personal service or registered mail, and proof of service shall be filed in the action or claim.~~

~~(c) The provider's claim for reimbursement for fees for services rendered to the beneficiary shall be limited to the amount of the fees less 25 percent, which represents the provider's reasonable share of attorneys' fees for prosecution of the action and of the cost of litigation expense.~~

~~(d) No claim authorized by this section shall be permitted to the extent that the claim would reduce the director's right to recover pursuant to Section 14124.78.~~

SEC. 3. Section 14124.791 is added to the Welfare and Institutions Code, to read:

14124.791. (a) (1) The Legislature finds and declares all of the following:

(A) Public hospitals face an overwhelming task in their efforts to provide access to health services and quality care to the indigent and uninsured in the communities they serve. Reductions in federal funding, the cost of care provided in emergency rooms, pressure from providers to increase reimbursement rates, pressure from the state and insurers to reduce costs, and increased regulation to improve patient safety and the quality of care, have put many public hospitals on the brink of closure.

1 (B) Public hospitals are needlessly constrained in meeting the
2 cost of operations by legal impediments to their ability to recover
3 the reasonable costs of care provided from responsible parties.

4 (C) It is necessary to allow public hospitals to exercise lien
5 recovery rights relative to an individual that has received free
6 care at a public hospital when that patient receives compensation
7 for the cost of medical expenses resulting from acts of a third
8 party.

9 (D) Granting providers lien recovery rights increases a
10 provider's incentive to participate in the Medi-Cal program,
11 thereby improving a Medi-Cal beneficiary's access to care.

12 (E) Granting providers lien recovery rights increases a
13 provider's incentive to notify the State Department of Health
14 Services of the existence of third-party liability.

15 (F) Allowing providers to recover payment from responsible
16 third-party tortfeasors, subject to the provider's full refund to the
17 State Department of Health Services, furthers the goal of the
18 Medi-Cal program to be the payer of last resort, results in
19 savings to the state, and assists the state in carrying out its
20 obligations to identify and recover funds from third parties that
21 are responsible to pay for the care provided to Medi-Cal
22 beneficiaries.

23 (2) It is the intent of the Legislature in enacting the act that
24 added this section to respond to the invitation of the California
25 Supreme Court in *Olszewski v. Scripps Health* (2003) 30 Cal.4th
26 798, to permit providers to recover their reasonable and
27 necessary charges while protecting Medi-Cal beneficiaries'
28 rights to recover full damages from responsible third-party
29 tortfeasors, and to preclude tortfeasors from receiving the benefit
30 of the Medi-Cal program at the expense of providers,
31 beneficiaries, and taxpayers.

32 (b) Subject to the director's prior right of recovery, a provider
33 who has rendered services to a beneficiary because of an injury
34 for which a third party is or may be liable and who has received
35 payment under the Medi-Cal program shall be entitled to a lien
36 for the reasonable and necessary charges for services provided
37 to the beneficiary against the portion of any judgment, award, or
38 settlement relating to past medical expenses obtained by the
39 beneficiary or the director against that third party. A provider
40 may recover upon the lien only upon proof that the provider has

1 *made a full refund of all payments made by the Medi-Cal*
2 *program to the provider for these services. Proof of refund of all*
3 *payments made to the department shall be in the form of a copy*
4 *of the check to the department and appropriate representation*
5 *that the check was mailed to the department.*

6 *(c) If either the beneficiary or the director brings an action or*
7 *claim against the third party, the party bringing the action shall,*
8 *within 30 days of bringing the action, give written notice to any*
9 *provider who is eligible to file a lien under subdivision (b) of, to*
10 *the extent known, the name and address of each third party and*
11 *the name and address of each insurance carrier that has insured*
12 *the third party against the liability and, to the extent applicable,*
13 *the name of the action and court or state or local agency in*
14 *which the action or claim is brought. Notice shall be given by*
15 *personal service or registered mail, and proof of service shall be*
16 *filed in the action or claim.*

17 *(d) (1) The lien shall become perfected when the provider*
18 *sends a written notice containing the name and address of the*
19 *injured person, the name and location of the provider, and the*
20 *amount claimed as reasonable and necessary charges, to the*
21 *beneficiary's attorney, if known, and if not known, to the*
22 *beneficiary or the beneficiary's legal representative and to the*
23 *director.*

24 *(2) If notice is given to the beneficiary and the provider*
25 *subsequently has notice that the beneficiary has legal*
26 *representation, the provider shall give written notice to the*
27 *beneficiary's attorney. The failure to give notice to the*
28 *beneficiary's attorney pursuant to this paragraph shall not*
29 *invalidate the lien.*

30 *(3) The written notice required by this subdivision shall be*
31 *sent by registered mail.*

32 *(4) The amount claimed in the notice, or so much of that*
33 *amount as can be satisfied from any final judgment, compromise,*
34 *or settlement agreement after paying any other medical provider*
35 *lien, the priority for which is statutorily required, shall be*
36 *deemed to be included within any judgment, award, or settlement*
37 *unless the judgment, award, or settlement expressly allocates a*
38 *lesser amount. Any recovery on the lien shall be limited to that*
39 *portion of the judgment, award, or settlement constituting*
40 *compensation for past medical expenses.*

1 (e) Where a provider is entitled to file a lien under this
2 section, the third party may not use the amount paid by Medi-Cal
3 to reduce the amount of its liability.

4 (f) If the beneficiary has filed a third-party action or claim, the
5 court where the action or claim was filed shall have jurisdiction
6 over a dispute between the provider and the beneficiary
7 regarding the amount of a lien asserted pursuant to this section
8 that is based upon an allocation of damages contained in a
9 settlement or compromise of the third-party action or claim. If no
10 third-party action or claim has been filed, any superior court in
11 California where venue would have been proper had a claim or
12 action been filed shall have jurisdiction over the motion. The
13 motion may be filed as a special motion and treated as an
14 ordinary law and motion proceeding and subject to regular
15 motion fees. The reimbursement determination motion shall be
16 treated as a special proceeding of a civil nature pursuant to Part
17 3 (commencing with Section 1063) of the Code of Civil
18 Procedure. When no action is pending, the person making the
19 motion shall be required to pay a first appearance fee. When an
20 action is pending, the person making the motion shall pay a
21 regular law and motion fee.

22 (g) In any motion filed pursuant to subdivision (f), all of the
23 following shall apply:

24 (1) The provider asserting a lien pursuant to this section and
25 the beneficiary shall be made a party to the motion, and either
26 the beneficiary or the provider may file the motion. In cases
27 where the third-party claim was tried to a verdict or judgment,
28 the motion shall be heard by the trial judge, if available. In cases
29 where an action has been filed and settled or otherwise resolved
30 prior to verdict or judgment, the motion shall be heard by the
31 judge to whom the matter was assigned, or, if no judge was
32 assigned or the assigned judge is unavailable, in the regular law
33 and motion department or by a judge assigned to hear the
34 matter. When no action has previously been filed, the motion
35 shall be assigned and heard pursuant to the regular law and
36 motion procedures in the court where the motion is filed.

37 (2) Within 14 days of a request from a provider, the
38 beneficiary shall serve a true and correct copy of those portions
39 of the settlement document upon which the asserted allocation is
40 based that are relevant to the determination motion. If not

1 requested by a provider, a true and correct copy of those
2 portions of the settlement document on which the asserted
3 allocation is based that are relevant to the determination motion
4 shall be served with the motion.

5 (3) (A) If the beneficiary is the moving party, notice of the
6 motion shall be addressed to any counsel representing the
7 provider on the lien, if known, and if not known, to the provider
8 at the provider's address as shown on the notice of lien. If the
9 provider is the moving party, notice of the motion shall be
10 addressed to the beneficiary's counsel, if known. If the
11 beneficiary is not represented by counsel, the notice of motion
12 shall be mailed to the beneficiary by registered mail. Proof of
13 service in compliance with this subdivision shall be filed with the
14 court.

15 (B) Notice required under this paragraph shall be given
16 pursuant to subdivision (b) of Section 1005 of the Code of Civil
17 Procedure.

18 (4) If the beneficiary is represented by counsel, the beneficiary
19 shall bear the burden of proof as to the fairness of the allocation
20 and the burden of producing evidence, by declaration or other
21 written form, as to the manner in which the allocation was made
22 and the evidentiary basis for the allocation. If the beneficiary is
23 not represented by counsel, the party making the motion shall
24 bear the burden of proof as to the fairness of the allocation and
25 the burden of producing evidence, by declaration or other
26 written form, as to the manner in which the allocation was made
27 and the evidentiary basis for the allocation.

28 (5) In determining the fairness of the allocation, the court
29 shall consider the relationship of damages for past medical
30 expenses to the total damages claimed and the total amount of
31 the settlement.

32 (6) The court shall issue its findings, decision, and order,
33 which shall be considered the final determination of the parties'
34 rights and obligations with respect to the provider's lien, unless
35 the settlement is contingent on an acceptable allocation of the
36 settlement proceeds, in which case, the court's findings, decision,
37 and order shall be considered a tentative determination. If the
38 beneficiary does not serve notice of a rejection of the tentative
39 determination, which shall be based solely upon a rejection of
40 the contingent settlement, within 30 days of the notice of entry of

1 the court's tentative determination, subject to further
2 consideration by the court pursuant to paragraph (7), the
3 tentative determination shall become final.

4 (7) If the beneficiary does not accept the tentative
5 determination, which shall be based solely upon a rejection of
6 the contingent settlement, any party may subsequently seek
7 further consideration of the court's findings upon application to
8 modify the prior findings, decision, or order, based on new or
9 different facts or circumstances. The application shall include an
10 affidavit showing what application was made before, when, and
11 to what judge, what order or decision was made, and what new
12 or different facts or circumstances, including a different
13 settlement, are claimed to exist. Upon further consideration, the
14 court may modify the allocation in the interest of fairness and for
15 good cause.

16 (h) No claim authorized by this section shall be permitted to
17 the extent that the claim would reduce the director's right to
18 recover pursuant to Section 14124.78. However, the
19 department's receipt of the provider's refund pursuant to
20 subdivision (b) shall extinguish the director's claim for the same
21 services. Section 1008 of the Code of Civil Procedure does not
22 apply to any motion filed pursuant to subdivision (f).

23 (i) Any person, firm, or corporation, including, but not limited
24 to, an insurance carrier, who receives notice of a lien asserted
25 pursuant to this section and who makes any payment to the
26 injured person, or to his or her attorney, heirs, or legal
27 representative, for the injuries the beneficiary sustained, after
28 receipt of this notice, without paying to the provider the amount
29 the provider is entitled to receive as payment on its lien, shall be
30 liable to the provider for that amount.

31 (j) For purposes of this section, "reasonable and necessary
32 charges" means the usual, customary, and reasonable charges
33 for medical services in the geographic region where the services
34 were provided, when these services were medically necessary to
35 treat the injuries allegedly caused by a third-party tortfeasor.
36 The beneficiary has the burden of proof in a third-party action or
37 claim to establish the reasonable value of medical and hospital
38 expenses, reasonably required and actually provided for the
39 treatment of the beneficiary as the result of a third-party's
40 conduct.

1 (k) The amount paid to the provider by Medi-Cal shall not be
2 considered in the determination of the amount of a provider's
3 lien or in the determination of the amount of the third-party
4 tortfeasor's liability to the beneficiary. This provision overturns
5 *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635, to the
6 extent that case is inconsistent with this provision. This provision
7 is declarative of existing law as stated in *Helfend v. Southern Cal*
8 *Rapid Transit Dist.* (1970) 2 Cal.3d 1.

9 (l) When a final judgment in the third-party claim includes a
10 special finding by a judge, jury, or arbitrator that the beneficiary
11 was partially at fault, the provider's lien shall be reduced by the
12 same comparative fault percentage by which the beneficiary's
13 recovery for past medical expenses was reduced.

14 (m) At the request of the beneficiary, the court or arbitrator in
15 the third-party action or claim shall provide for special findings
16 with respect to compensation allocated to past medical expenses.

17 (n) The provider's lien shall be reduced by the pro rata
18 amount commensurate with the beneficiary's reasonable
19 attorney's fees and costs in accordance with the common fund
20 doctrine. The amount of the reduction in the provider's lien
21 pursuant to this subdivision shall accrue solely to the benefit of
22 the beneficiary and shall not constitute additional attorney's fees
23 and costs owed or payable to the beneficiary's attorney.

24 (o) If any provision of this section, or the application of any
25 provision of this section to any person, firm, corporation, or
26 other entity or to any circumstance or situation, shall be held
27 invalid, the remaining provisions of this section shall not be
28 affected thereby, and shall be given effect.

29 (p) Subdivision (e) shall have no effect on the rights of parties
30 or public agencies under Section 985 of the Government Code.

31 (q) As used in this section "provider" means all of the
32 following:

33 (1) A county enforcing a lien pursuant to Section 23004.1 of
34 the Government Code.

35 (2) A physician or surgeon required to be licensed under
36 Section 2050 of the Business and Professions Code.

37 (3) Any public hospital, including those operated under the
38 auspices of a county or other local government or the University
39 of California.

1 ~~SECTION 1. Section 23004.1 of the Government Code is~~
2 ~~amended to read:~~

3 ~~23004.1. (a) Subject to the provisions of Section 23004.3, in~~
4 ~~any case in which the county is authorized or required by law to~~
5 ~~furnish hospital, medical, surgical, or dental care and treatment,~~
6 ~~including prostheses and medical appliances, to a person who is~~
7 ~~injured or suffers a disease, under circumstances creating a tort~~
8 ~~liability upon some third person to pay damages therefor, the~~
9 ~~county shall have a right to recover from said third person the~~
10 ~~reasonable value of the care and treatment so furnished or to be~~
11 ~~furnished, or shall, as to this right, be subrogated to any right or~~
12 ~~claim that the injured or diseased person, his guardian, personal~~
13 ~~representative, estate, or survivors has against such third person~~
14 ~~to the extent of the reasonable value of the care and treatment so~~
15 ~~furnished or to be furnished.~~

16 ~~(b) In order to enforce subrogation rights, the county may~~
17 ~~institute and prosecute legal proceedings against the third person~~
18 ~~who is liable for the injury or disease in the appropriate court,~~
19 ~~either in its own name or in the name of the injured person, his~~
20 ~~guardian, personal representative, estate, or survivors. Such~~
21 ~~action shall be commenced within the period prescribed in~~
22 ~~Section 340 of the Code of Civil Procedure. In the event that the~~
23 ~~injured person, his guardian, personal representative, estate,~~
24 ~~survivors, or either of them brings an action for damages against~~
25 ~~the third person who is liable for the injury or disease, the~~
26 ~~county's right of action shall abate during the pendency of such~~
27 ~~action, and continue as a first lien against any judgment~~
28 ~~recovered by the injured or diseased person, his guardian,~~
29 ~~personal representative, estate, or survivors, against the third~~
30 ~~person who is liable for the injury or disease, to the extent of the~~
31 ~~reasonable value of the care and treatment so furnished or to be~~
32 ~~furnished. When the third person who is liable is insured, the~~
33 ~~county shall notify the third person's insurer, when known to the~~
34 ~~county, in writing of the lien within 30 days following the filing~~
35 ~~of the action by the injured or diseased person, his guardian,~~
36 ~~personal representative, estate, or survivors, against the third~~
37 ~~person who is liable for the injury or disease; provided, however,~~
38 ~~that failure to so notify the insurer shall not prejudice the claim~~

- 1 ~~or cause of action of the injured or diseased person, his guardian,~~
- 2 ~~personal representative, estate, or survivors, or the county.~~

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